

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

NOV 10 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Section 309(j))
of the Communications Act)
Competitive Bidding)

PP Docket No. 93-253

To: The Commission

**JOINT COMMENTS OF ROCKY MOUNTAIN TELECOMMUNICATIONS ASSOCIATION
AND WESTERN RURAL TELEPHONE ASSOCIATION**

John A. Prendergast
Their Attorney

Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, NW
Suite 300
Washington, DC 20037
(202) 659-0830

Dated: November 10, 1993

No. of Copies rec'd
List A B C D E

0410

TABLE OF CONTENTS

Table of Contents	i
Summary	iii
I. Statement of Interest	2
II. The Commission Should Ensure That Rural Telephone Companies Can Serve Their Exchange Areas, in Licensing the Spectrum Set Aside for "Protected" Groups	4
A. The Commission Should Set Aside PCS Blocks C and D	4
B. The PCS/Cellular Ownership Restrictions Should Not Apply to Blocks C and D	6
C. Rural Telephone Service Preference	7
III. The Commission Should Provide Other Financial Incentives That Will Ensure Service by Rural Telcos to their Service Areas	14
IV. Additional Safeguards for Protected Groups Should Be Adopted	16
V. Definition of Protected Groups	19
A. Rural Telephone Company	19
B. Small Business	21
C. Minority/Woman-Owned Business	21
VI. Rural Telephone Companies and Other Protected Groups Should be Afforded Protections in Seeking to Aggregate One of the Available 10 MHz Spectrum Blocks	21

VII. PCS Blocks C and D Should Not Be Available for Aggregation	22
VIII. Performance Requirements	23
IX. The Commission Should Not Apply Its Proposed Upfront Payment/Deposit Requirements to Rural Telephone Companies	24
X. The Commission Should Not Apply Onerous License/Deposit Forfeiture Requirements to Rural Telephone Companies	26
XI. Auction Sequence	29
XII. The Commission Should Consider Bifurcating the Competitive Bidding Rulemaking with Regard to Non-PCS Services	29
Conclusion	31

SUMMARY

Rocky Mountain Telecommunications Association and Western Rural Telephone Association ("the Western Alliance") strongly urge the Commission to adopt safeguards in the competitive bidding procedures that will ensure that rural telephone companies have the opportunity to provide personal communications services (PCS) and other emerging technologies to the rural communities they serve. Such safeguards would implement the dual Congressional policy goals of ensuring that rural America enjoy the benefits of new radio services, while at the same time preventing any threat to universal telephone service that may be created if other PCS providers can "cherry pick" rural telephone companies' prime business customers.

The Commission should clarify that the cellular ownership restrictions for PCS licensees adopted in General Docket No. 90-314 do not apply to rural telephone companies and other protected groups applying for PCS spectrum Blocks C and D. If the cellular ownership attribution rules are applied to these blocks, many rural telephone companies and other protected entities will be excluded from PCS even though they do not hold a controlling interest in a cellular system. This result would run afoul of the mandate of Congress to ensure participation by these protected entities in PCS and other emerging technologies.

The Commission should adopt a mechanism whereby, if a rural telephone company (or consortium of such telephone carriers) is not the high bidder for PCS Block C, it would nonetheless be awarded managerial control of the license for the Basic Trading Area (BTA) which included its certificated area(s). The high bidder would receive a minority (e.g., 49 percent) interest in the license, and the parties would work together to implement PCS throughout the BTA, ensuring prompt service to rural areas as well as larger cities and towns. The Commission could adopt financial incentives to ensure that the parties could reach mutually agreeable terms for construction and operation of the system. However, managerial control for the telephone companies is necessary to provide the impetus for such negotiation. In the alternative, the Commission could mandate rural telephone participation in the Block C license, requiring the high bidder to utilize "microcell" technology or other measures that would allow rural telephone companies to serve their certificated areas.

The Commission should also adopt a financial incentive program that would encourage PCS licensees to involve rural telephone companies in their system, to ensure the prompt build-out of service to rural areas. If the licensee made a good faith effort to involve each rural telephone company with an exchange area in the PCS service area, it would be entitled to some of the benefits available to rural telephone companies (such as bid

preferences) and would be subject to a modified construction schedule that would make the rural telephone companies responsible for service to rural areas.

Rural telephone companies eligible for the above benefits should include carriers serving fewer than 20,000 access lines or study areas that have neither 10,000 or more inhabitants nor urbanized areas within their boundaries.

The Commission should also adopt safeguards that apply in general to the four protected groups enumerated by Congress, including: (1) bid multipliers; (2) installment payments; (3) royalty payments (for a portion of the bid); (4) tax certificate program; (5) financial self-certification and (6) distress sale procedures. The Commission should not apply warehousing/performance requirements to rural telephone companies, who have a proven record of dedicated service to their rural communities. For the same reason, upfront payment/deposit requirements should not be applied to rural telephone companies. License and deposit forfeiture rules should not be applied for correctable errors in an application, especially in the case of rural telephone companies. Such result is draconian and counterproductive to participation by the Congressionally mandated groups. With regard to radio services other than PCS, the Commission should bifurcate this proceeding to consider auction rules for existing services with the benefit of auction experience and a more complete record.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
NOV 10 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 309(j))
of the Communications Act) PP Docket No. 93-253
Competitive Bidding)
)

To: The Commission

**JOINT COMMENTS OF ROCKY MOUNTAIN TELECOMMUNICATIONS ASSOCIATION
AND WESTERN RURAL TELEPHONE ASSOCIATION**

Rocky Mountain Telecommunications Association (RMTA) and the Western Rural Telephone Association (WRTA) (hereinafter jointly referred to as "the Western Alliance"), hereby submit their joint comments in response to the Commission's Notice of Proposed Rulemaking (NPRM) in PP Docket No. 93-253, Mimeo No. FCC 93-455, released October 12, 1993. As described below, it is imperative that the Commission adopt strong safeguards to implement the dual Congressional policy goals of ensuring rural participation in emerging technologies such as personal communications services (PCS), and preventing any threat to universal telephone service. This threat could arise if rural telephone companies are precluded from providing PCS and other emerging technologies to their prime business customers, with the resulting loss of business driving up the costs of service to rural, residential customers. To prevent this result, and to ensure that rural America enjoys the benefits of new technologies (which can be vital in bringing medical, scientific, educational and other

advances to rural areas that may be located far from large hospitals and universities), the Western Alliance urges the Commission to adopt the specific preferences, financial incentives, and other measures described below. These recommendations are designed with a common goal: to ensure that rural telephone companies are able to provide PCS and other new services within their certificated service areas. However, as demonstrated below, most of the proposed protections also benefit other protected groups identified by Congress.

In support of these comments, the following is shown:

I. Statement of Interest

RMTA is a telecommunications association made up of nearly 90 members, including nearly 85 smaller commercial telephone companies, cooperatives and Native American-owned operations providing telephone services to their Reservation, as well as exchange carriers as large as U S West, and several national holding companies. All of the members of RMTA are engaged in providing telecommunications services throughout the Rocky Mountain region of the United States, including the states of Arizona, Colorado, Idaho, Montana, New Mexico, Utah and Wyoming, as well as portions of other bordering states. RMTA has participated in both the General Docket No. 90-314, governing PCS, and the related ET Docket No. 92-9, governing the

reallocation of the 2 GHz band to be made available for emerging technologies.¹

WRTA is an association representing a geographic area encompassing 488 primarily small telephone companies and telephone cooperatives serving both urban and rural areas throughout 23 states west of the Mississippi (including Alaska), as well as three U.S. territories (including Guam, Micronesia and the Marshall Islands). Because the majority of rural areas in the United States are located west of the Mississippi (including approximately a majority of the service areas of telephone companies that are Rural Electrification Administration (REA) borrowers), WRTA's membership represents states containing a substantial portion of all small, high cost rural telephone companies in the country.² Numerous RMTA members are also included in WRTA's ranks, and the two associations are forming a western alliance to bring to the attention of the Commission and Congress the unique problems facing telephone carriers in this portion of the country. Many of the members of RMTA and WRTA likewise qualify as small businesses under applicable Federal statutes, and some of the members (including the above mentioned Native American-owned telephone operations) qualify as minority

¹ See June 5, 1992 RMTA Comments in ET Docket No. 92-9; July 6, 1992 Reply Comments in ET Docket No. 92-9; and January 8, 1993 Reply Comments in General Docket No. 90-314.

² The states west of the Mississippi include 489 (or 54%) of the 899 telephone companies that are REA borrowers. See 1992 Statistical Report, Rural Telephone Borrowers, Informational Publication 300-4, p. 32.

and/or women-owned businesses. Accordingly, RMTA and WRTA are uniquely situated to provide the Commission with useful information on how best to implement the protections for rural telephone companies, small businesses, and minority/women-owned businesses that are mandated in the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act").

On September 10, 1993, the Western Alliance filed a Joint Petition for Further Notice of Proposed Rulemaking in General Docket No. 90-314, urging the Commission to accept public comment on its proposed spectrum auction rules, and urging many of the protections discussed herein to ensure rural telephone company participation in PCS and other emerging technologies. The NPRM in this proceeding instructed that "all previously filed petitions for rule making concerning competitive bidding that the petitioners believe have not been mooted by this proceeding should be refiled in order to be considered." NPRM, p. 61, n. 200. Accordingly, the instant comments are being submitted in order to ensure that the Western Alliance's proposals are considered in the instant proceeding, and to refine these proposals in light of the numerous issues raised in the NPRM.

II. The Commission Should Ensure that Rural Telephone Companies Can Serve Their Exchange Areas, in Licensing the Spectrum Set Aside for "Protected" Groups.

A. The Commission Should Set Aside PCS Blocks C and D.

In passing the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act"), Congress and the President of the United States identified four groups whose participation in emerging

technologies such as PCS is to be encouraged by making these groups a "licensing objective." These four groups include rural telephone companies, small businesses, businesses owned by members of minority groups, and businesses owned by women. Congress identified the participation of these four groups as necessary to ensure the promotion of an equitable distribution of licenses and services among geographic areas, and economic opportunity for a wide variety of applicants. See Section 6002 of the Budget Act. As a separate goal in the spectrum auction process, Congress has mandated that the Commission take measures to ensure "the development and rapid deployment of new technologies, products and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delay." See Section 6002(a) of the Budget Act (emphasis added). One of the measures the Commission has proposed in order to fulfill its Congressional mandate is the designation of two blocks of PCS spectrum for licensing only to members of the protected groups. These spectrum blocks include a 20 MHz frequency block ("Block C") and a 10 MHz frequency block ("Block D"), both of which are to be licensed on a Basic Trading Area (BTA) basis, as that term is defined by Rand-McNally. The Western Alliance supports the Commission's classification of these spectrum blocks for licensing of the protected groups identified by Congress.

B. The PCS/Cellular Ownership Restrictions Should Not Apply to Blocks C and D.

The Commission should clarify that its proposed cellular ownership restrictions for PCS would not apply to PCS Blocks C and D, since this spectrum is set aside for rural telephone companies and other protected groups. Otherwise, the protected entities could find themselves prohibited from providing service on the set aside spectrum, despite Congress' mandate. While many small business (including most rural telephone companies) hold less than 20 percent of the cellular license for their certificated area, and many rural cellular systems serve less than 10 percent of the population of the relevant BTA, these benchmarks could be passed when the cellular interest and coverage of each of the participating entity in a consortium is added up under the Commission's newly adopted cellular ownership attribution rules for PCS. See Second Report and Order, General Docket No. 90-314, Mimeo No. FCC 93-451 (released October 22, 1993) at pp. 46-47.

The Commission has announced its intention to apply the new cellular ownership attribution rules to local exchange carriers applying for PCS. Id. at p. 53. However, it is respectfully submitted that the application of the cellular attribution rules to rural telephone companies (or any other protected entity) applying for Blocks C and D would defeat Congress' mandate. Congress expressed no concern about anticompetitive activities by cellular licensees; however, Congress clearly and repeatedly

expressed the need for rural telephone, small business and minority/woman-owned business participation in PCS.

Indeed, in adopting the cellular ownership restrictions, two of three Commissioners expressed concern about the adverse public interest impact of these restrictions on rural telephone companies and others wanting to participate in PCS. Thus, Commissioner Barrett states his dissatisfaction with the cellular ownership restriction because it applies even where the potential PCS applicant holds a non-controlling cellular interest. See Second Report and Order, supra. (Dissenting Statement of Commissioner Barrett at p. 14.) Commissioner Barrett astutely observes that "rural telephone companies may find themselves unnecessarily restricted from PCS due to this limitation." Id. Commissioner Duggan likewise expresses concern over the restriction, stating that "I would like to find a way to accommodate parties holding such interests if they are non-controlling or passive interests, since it seems to me unduly harsh to bar parties who are incapable of engaging in anti-competitive conduct." Id., separate statement of Commissioner Duggan, at p. 2.

C. Rural Telephone Service Preference

The Commission should prioritize the licensing of these groups, in a way that ensures prompt service to rural telephone exchange areas. In particular, the Commission should grant a decisive priority to a rural telephone company that proposes to provide PCS on Block C within its certificated telephone service

area. In the absence of such decisive preference, the overriding public interest goals which Congress sought to further in passing Section 309(j)(3) of the Budget Act will be defeated.

The rural telephone protections built into the Budget Act have two equally important bases: the first (embodied in amended Section 309(j)(3)(A)) is to ensure service to rural areas. This concern is based on the fact that providers of advanced services are generally driven by a profit motive, and therefore will often target only densely populated areas or high volume users for these services. Historically, rural communities have depended on their telephone companies to make available advanced services (such as paging and cellular). In this regard, the western United States is faced with a unique population dynamic. The eastern half of the United States is made up of urban areas surrounded by suburbs which often extend to the next city. However, in the west, major cities are often surrounded by rural areas. Thus, one can drive but a few minutes from the city limits of Phoenix, Las Vegas, or Albuquerque and find themselves in a sparsely populated desert area. This creates the danger that the successful bidders for all of the available blocks of PCS spectrum in a given western region (including those blocks designated for protected groups) will propose systems serving the major city within the designated filing area, leaving the surrounding rural areas largely unserved.³ However, their

³ The newly adopted Rule Section 99.206 requires "adequate service" to one-third of the population within five years, two-thirds of the population within seven years, and 90 percent

successful bid will preclude the licensing of rural telephone companies to provide service to those outlying smaller communities.

Protection of rural telephone companies is vital for a related but distinct reason. Rural telephone companies have committed themselves to undertake universal service to sparsely populated, high cost areas. Profit margins for service to these areas is not high. Indeed, in many rural areas, the residents received telephone service only by forming their own telephone cooperative. To the extent that PCS providers may see fit to serve rural areas, they will no doubt target the higher-volume business customers that currently receive service from rural telephone companies. This "cherry picking" could deprive many rural telephone companies of their major source of revenues, which will significantly drive up the costs of providing service. Indeed, some rural telephone companies could eventually be forced out of business. Thus, at stake is not merely the provision of advanced services to rural communities, but also the continued provision of affordable basic telephone service. If the telephone companies are not allowed to compete in the provision of PCS as an enhanced substitute for local exchange service, many

within ten years. However, this requirement is of little comfort to rural communities, since it means that service is not likely to be forthcoming until the last stage of construction, which could be ten years away. Moreover, the ten percent of the population left unserved will be rural communities. And the term "adequate service" is not defined, leaving the possibility that any service eventually provided to rural areas may not be suited to their needs.

rural residents may soon find themselves without telephone service.

Many rural telephone companies also qualify as small businesses under the definitions used by the Small Business Administration; and a number of these carriers are owned by minorities and/or women. Many rural telephone companies are cooperatives, with each subscriber owning one share of the company. These carriers naturally have a significant percentage of ownership by women. Therefore, a priority for these entities furthers Congressional protection of more than one of the groups identified as licensing objectives. In any event, it is respectfully submitted that the overriding importance of extending new services to rural areas, and preventing a threat to affordable, universal telephone service mandates that rural telephone companies be given the requested priority.

The new services that can potentially be offered by PCS licensees include data and video capabilities that could extend the benefit of advanced medical services to those rural areas where there are few doctors and no major medical centers; advanced vocational training and educational opportunities to those areas where there are no universities; and other communications capabilities that will allow small, rural businesses to participate in the marketplace despite their remote location. However, rural telephone companies are the only entities with a vested interest in the communications needs of their rural communities, and an established record of striving to

bring such services to these high cost areas. Only rural telephone companies are under a state regulatory mandate to extend such services to their rural service areas. The other protected groups, like all PCS bidders, are likely to concentrate their efforts on the population center within each BTA or MTA.

Accordingly, where a rural telephone company (or a consortium which qualifies as a "rural telephone company," as discussed below) bids against another protected group for PCS spectrum block C (and is not the high bidder) , the rural telephone company should be awarded the license whenever (a) its certificated telephone service area is included in the BTA on which it bids; and (b) the rural telephone company agrees to pay 70 percent of the high bid for the BTA.⁴ If there is more than one rural telephone company seeking to provide PCS to its certificated area within the BTA, the telephone company seeking a preference would be required to form a consortium with these other rural telephone carriers. In order to ensure that any

⁴ The bid to be submitted by telephone companies for this license should be calculated as follows: All participating telephone companies with exchange areas within the BTA would submit a composite bid. This bid must be equal to or greater than 70 percent of the high bid submitted by non-telephone companies for the other available frequency blocks serving that BTA. In this way, the Commission can be assured that it will receive a fair value for the spectrum. While this bid will not be the highest possible bid, the language used by Congress in adopting the competitive bidding provision of the Budget Act (including the mandate that the Commission consider "bid preferences" and other measures to assure PCS availability to rural telephone companies) clearly evidences an intent that the revenue generating goals of the bidding process be tempered to ensure service to rural areas and participation by rural telephone companies.

other protected group that was the high bidder for Block C would not be excluded from participating in PCS, the Western Alliance would propose that the telephone company (or consortium) receiving the decisive preference be given a 50.1 percent interest (or other form of management control) in the PCS license for the BTA, with the understanding that a primary objective of the Block C licensee will be to promptly extend PCS service to the certificated areas of the participating telcos. The high bidder would be given a 49.9 percent interest in the BTA license, with the understanding that the parties would work towards implementing PCS throughout the BTA, while at the same time ensuring that the telephone companies can serve their customers.⁵

The proposed prioritization scheme would not apply to BTAs which do not include rural telephone company exchange areas. Moreover, Block D would be left for other protected entities in all BTAs. The Commission could offer financial incentives (such as further bid discounts) to encourage the rural telephone company (or consortium) to form a partnership with a non-

⁵ If a BTA includes rural areas (as defined in Section V below) that were served by a carrier that does not qualify as a "rural telephone company," the Western Alliance proposes that such carrier be allowed to participate in the consortium to the extent necessary to ensure service to the rural areas within its telephone exchanges. This carrier could not hold any other PCS licenses. All telephone companies would have a single vote in deciding how to exercise managerial control, so that the ineligible carrier could not dominate the decision making process. These ineligible carriers would likewise not be able to fully participate in the economic benefits (such as tax certificates) to which rural telephone companies will be entitled. In this way, rural residents who happen to live in an area served by an ineligible carrier would not be deprived of PCS service.

telephone company high bidder for Block C, on mutually acceptable terms. The Western Alliance also proposes that rural telephone companies wishing to take advantage of the proposed preference would agree to significantly accelerate their relocation from any 2 GHz microwave spectrum on which they operate, so as to quickly clear the way for new PCS licensees in this spectrum.

As an alternative to this rural telephone preference, the Commission should consider some form of mandatory participation for rural telephone companies within a PCS service area (on at least one of the available frequency blocks of either 20 or 30 MHz bandwidth). See, e.g., September 10, 1993 Joint Petition for Further Notice of Proposed Rulemaking of Rocky Mountain Telecommunications Association and Western Rural Telephone Association in General Docket No. 90-314, at pp. 23-25. Such requirement would be consistent with Commissioner Barrett's suggestion that rural telephone participation be required to build out service to rural areas. See Second Report and Order, supra, dissenting opinion of Commissioner Barrett at p. 15. Whether rural telephone participation is secured by a preference for rural telephone company applicants, or required rural telephone participation with another licensee, the Western Alliance would urge the Commission to adopt incentives with either approach that would encourage the rural telephone carriers and other protected groups to form voluntary consortia that would accomplish the same goal.

III. The Commission Should Provide Other Financial Incentives That Will Ensure Service by Rural Telcos to their Service Areas.

In order to ensure that rural telephone companies are given a realistic economic opportunity to extend PCS service to their customers, the Commission should allow consortiums between rural telephone companies and other entities that will encourage larger, well funded applicants to seek rural telephone participation in their proposal. By joining such consortiums, the rural telephone companies within the proposed service area can extend the benefits of the PCS system to their exchanges sooner than the winning bidder may otherwise see fit to do so. The Western Alliance proposes that if a consortium includes those rural telephone companies that serve areas within the proposed MTA or BTA, the consortium would qualify for some or all of the protections which the Commission proposes to adopt for rural telephone companies. These protections would include, e.g., the ability to pay the winning bid by installments and/or royalties, bid discounts/multipliers, and use of tax certificates. See Section V, infra. Also, a qualifying consortium would not face complete forfeiture of its license for failure to construct in accordance with the Commission's mandatory coverage benchmarks.⁶ Instead, if 30 percent of the population of a BTA resided in rural exchange areas of the participating telephone carriers,

⁶ The Commission has adopted construction benchmarks of one-third of the population within five years, two-thirds within seven years and 90 percent within ten years. See Second Report and Order in General Docket No. 90-314, Mimeo No. FCC 93-451, released October 22, 1993, page 55.

then service to this 30 percent would be the responsibility of those telephone companies. As discussed below in Section VIII, the telephone companies could provide service to these subscribers on a timetable that would vary depending on the individual circumstances of the rural community. In the event that these rural telephone exchanges failed to meet their construction deadlines, the overall licensee would be entitled to extend service to these areas on an abbreviated schedule (e.g., 18 months); in the absence of service by the licensee, the Commission could relicense these areas, in a fashion similar to the licensing of cellular "unserved areas."

In order to qualify for the protections to be extended to rural telephone companies, the consortium would be required to offer (on reasonable terms) to include each telephone company serving a rural exchange within the BTA, so that all rural communities within the BTA would be entitled to have its telephone company extend PCS services to them. The consortium would also have to make a commitment to allow its rural telephone company members to apply their capital contributions and efforts toward extending the PCS service to their rural communities, rather than being required to contribute to the construction of the system in urban areas first, only to find that service does not reach the rural portions of the BTA for several years. In this way, larger applicants would have a financial incentive to arrange for service to rural areas, and the rural telephone company members of these applicants would be able to bring the

benefits of PCS to their customers as expeditiously as possible, in accordance with the wishes of Congress.

In the absence of financial incentives or other measures to involve rural telephone companies, Rule Section 99.206 acts as a disincentive to promptly serve rural areas, in direct contradiction to the goals of Section 309(j)(3)(A). By requiring service to one-third of the population within five years, and two-thirds within seven years (at risk of license forfeiture), the construction requirement almost forces licensees to concentrate their efforts on urban and suburban areas of the BTA or MTA for the first seven years, turning their attention to rural areas only at the end of the license period, if at all. The above incentive program would mitigate this effect.

IV. Additional Safeguards For Protected Groups Should Be Adopted.

The above alternative licensing schemes are appropriate to implement the dual congressional goals of ensuring the rapid deployment of services to rural areas and protecting the viability of rural telephone companies. In addition, the Commission should adopt certain general protections to safeguard the interests of all of the identified groups. In particular, the Commission should:

- (1) Adopt bid multipliers for all protected groups, whereby every dollar bid by such entity will be multiplied by a predetermined factor (such as 1.5) to ensure that the protected entity's bid will be competitive with others. As the NPRM notes (at p. 24), Congress has not indicated that each protected group

must be afforded the same type of treatment. The Commission may wish to reflect this fact by designating different bid multipliers for different entities. Applicants who qualify under multiple protected groups (e.g., a rural telephone company that is a small or minority-owned business) should receive an increased multiplier.

(2) Adopt its proposal to allow installment payments by the protected groups, which would allow them to make more competitive bids by spreading payments out over a reasonable period of time. This extended schedule should take into account the source of financing to be used by the protected entity, so that payments would not begin until, e.g., loan approvals could be obtained and funds disbursed. The Commission should also consider adopting graduated payment schedules, so that payments are low at first, and increase over time as the system becomes operational and revenues increase.

(3) Allow payment of at least a portion of the bid amount by royalties, derived from the revenues received upon provision of service. The Commission could consider a flexible royalty schedule, whereby a greater portion of the bid could be paid by royalties upon a showing to the Commission that the system is constructed and has steady revenues. This would allow the licensee greater flexibility in making payments based on revenues (which may fluctuate from time to time) while at the same time providing the Commission with some assurance that the payments will be made. While the NPRM (at p. 21) expresses concern that

royalties "will act as a tax and tend to reduce output," the same is true of finance payments on funds borrowed to make a lump sum bid payment, or installment payments. The advantage of royalties is that they are based on income, such that payments are low if income is low, and only increase as income (and the licensee's ability to pay) increases.

(4) Adopt a tax certificate program to provide financial incentive for the protected groups to pursue PCS licenses, and for licensees to sell their authorizations to protected groups.

(5) Allow protected entities to "self-certify" their financial qualifications, along the lines proposed by the Commission's Small Business Advisory Committee. This measure would help alleviate the burden of elaborate audits that may otherwise be necessary to demonstrate the applicant's financial qualifications. Instead, the applicant could simply provide a letter of commitment from its financing source, combined with a statement of the applicant's available funds and financial commitments.

(6) Adopt a "distress sale" procedure that would allow protected groups to acquire a PCS license from a winning bidder who is found to be ineligible, otherwise unqualified, or unable to pay its bid. The protected groups could acquire this license at some discounted amount of its market value (as determined from the bidding process). See Report of FCC Small Business Advisory Committee, attached to Second Report and Order in General Docket No. 90-314, released October 22, 1993.

The above safeguards should apply whether the protected groups are bidding on PCS blocks C and D, or other spectrum. As applied to rural telephone companies, these protections should not in any way be diluted due to the availability of funding from the Rural Electrification Administration (REA). See NPRM at p. 25. The REA constitutes a source of financing for rural telephone companies, just as other entities are able to avail themselves of financing sources. While REA loans may be based on more favorable terms than those of a commercial bank, the other "protected" groups identified by Congress invariably have sources of financing available to them because of their protected status which are at least as favorable as REA funding.⁷ Moreover, REA funding is not available for the purpose of submitting bids on spectrum, and is available for construction of PCS and other emerging technologies under only limited circumstances. REA funding was generally not available for purposes of constructing rural cellular systems.

V. Definition of Protected Groups

A. Rural Telephone Company

The term "rural telephone company" should be defined as any common carrier that provides telephone exchange service (1) to 20,000 or fewer access lines, or (2) to a "rural area," as that term is defined below. Rural areas would be defined as any

⁷ See discussion of Small Business Investment Companies and Specialized Small Business Investment Companies. NPRM at p. 26.

"study area" (as defined in Part 36 of the Commission's Rules) which encompassed none of the following:

- (1) Any incorporated or unincorporated place of 10,000 inhabitants or more, or any substantial part thereof;
- (2) Any other territory, incorporated or unincorporated, included in an "urbanized area," as defined by the Bureau of Census; provided, however, that telephone service areas which extend in a de minimis basis into an urbanized area or place of 10,000 or more inhabitants shall not change the status of a "rural area," where fewer than 10 percent of a telephone company's access lines serve the urbanized area or ineligible community. This definition is similar to a definition included in the Senate's version of the Budget Act, for purposes of implementing a "rural program license" mechanism. 139 Cong. Rec. § 7948, 7998, (Daily ed., June 24, 1993).

Where a rural telephone company joins a coalition, the coalition could avail itself of the benefits accorded to rural telephone companies if: (1) a rural telephone company (or group of rural telephone companies) holds 50.1 percent or more of the consortium; or (2) the consortium includes (or attempts in good faith to include) all telephone companies that have rural exchanges within the proposed service area, and the coalition proposes to allow these carriers to devote their capital and expertise towards extending the proposed PCS to their rural exchanges within the first year of the commencement of operation of the system. This latter option would encourage PCS applicants